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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,706	02/25/2004	Paul Swenson	01841-22363.NP	3682

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SANDY, UT 84091-1219

EXAMINER
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FIELDS, BENJAMIN S

ART UNIT	PAPER NUMBER
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3684

NOTIFICATION DATE	DELIVERY MODE
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11/16/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rich@tnw.com  
causse@tnw.com  
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**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/786,706

**Applicant(s)**

SWENSON ET AL.

**Examiner**

BENJAMIN S. FIELDS

**Art Unit**

3684

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,2,4-9 and 11-21.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Notes below.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Thomas Dixon/  
Primary Examiner, Art Unit 3684

The Examiner maintains the following position in regards the prior art references which have been cited as teaching the limitations of the claims of the instant application:

Claims 1-2, 4-9, and 11-21 stand rejected per the Examiner. The Examiner has noted issues with the claims. These are:

1 - as amended recite and seemingly represent actions which can not effectively be claimed. In particular, focus on: "... a campaign designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response." The Examiner notes that such limitations per Applicants disclosure do not reasonably enable one skilled in the art to make and use the invention of the instant application. One of ordinary skill in the art would not have known how to consistently arrange flags to "stimulate an emotional response" or "heighten [an] emotional response" with fairly consistent tests/trials or results and without undue experimentation and/or guesswork. Furthermore, there is no definitive guarantee that such goal or attempt to "stimulate an emotional response" or "heighten [an] emotional response" will actually occur.

2 - In regards the prior art references:

Harmon does teach and suggest the funding of a charity or a group of charities. The Exhibit U and Harmon references, at least, when combined, teach or suggest all of the elements of independent Claim 1, even as amended. Specifically, the Exhibit U in combination with the Harmon reference does teach that a sponsor (buyers/sellers) initially pays for an item [flag] followed by selling the item to raise additional funds for a selected charity. The Exhibit U reference discloses a planned 30 acre national park and museum dedicated to the honor of the U.S. flag. (See page 1). The reference discloses plans for a "Field of Honor" containing over one-hundred granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star. Harmon, however, does teach or suggest a sponsor that initially pays for a charitable event prior to its commencement, with at least a portion of proceeds being donated to the charitable cause (Harmon: Figure 2; Page 1, Paragraphs 0004-0008; Claims 1-3). Harmon allows for an option embodiment where the reselling of an item can be for a greater price and thus can be attributed to the present invention, as recited in claim 1. The Examiner notes that the method of Claim 1 represents actions which can not be effectively claimed. In particular, a campaign designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response.

3 - Lastly, the Examiner notes that the currently amended claims as submitted by the Applicants (mail date: 5 November 2010) raise Claim Objections and/or 35 U.S.C. 112 issues which necessitate the undertaking of an additional search/reconsideration. Additionally, the Examiner has attached the currently proposed amendments of the claims (mail date: 5 November 2010) and have included these claims (NOT TO BE ENTERED) as part of the record for purpose of appeal.